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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

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10 CHARLES V. MCCLAIN III, pro se, and all  
11 others similarly situated,

12 Plaintiff,

13 v.

14 THE BOEING COMPANY, a foreign  
15 corporation, INTERNATIONAL  
16 ASSOCIATION OF MACHINISTS DISTRICT  
17 751, and GERALD T. CHAPUT,

18 Defendants.

CASE NO. C07-567RSM

ORDER ON MOTIONS FOR  
SUMMARY JUDGMENT

19 This matter is before the Court for consideration of three motions for summary judgment filed by  
20 defendants. Dkt. ## 118, 119, 122. Plaintiff has failed to respond to oppose any of the motions. All  
21 three motions shall be granted for the reasons set forth below.

22 DISCUSSION

23 The facts of this matter are well-known to the parties and the Court and need only be briefly  
24 summarized. Plaintiff was terminated from his employment with defendant The Boeing Company  
25 (“Boeing”) in 2007. He filed this action for breach of contract, breach of the duty of fair representation,  
26 retaliation, and failure to accommodate a disability against Boeing, his supervisor Gerald Chaput, and  
27 his union (“Union”). Dkt. # 1. The complaint also asserted state law claims of infliction of emotional  
28 distress, disparate treatment, failure to accommodate a disability under the Washington Law Against  
Discrimination (“WLAD”), and breach of the implied covenant of good faith and fair dealing. *Id.* The

1 Court granted defendants' motions for summary judgment on the federal claims, and declined to  
2 exercise supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(c)(3). Dkt. #  
3 77. On appeal, the Ninth Circuit Court of Appeals affirmed the dismissal of plaintiff's federal claims,  
4 but vacated and remanded as to the state law claims, "to allow the district court to consider in the first  
5 instance whether McClain's state law claims were completely preempted." Memorandum of the Ninth  
6 Circuit Court of Appeals, Dkt. # 114. The Court then set a briefing schedule for cross-motions for  
7 summary judgment. Dkt. # 116.

8 Defendants timely filed their motions for summary judgment on December 30, 2011, noting  
9 them for consideration on March 2, 2012. The time for plaintiff to respond has long passed, and he has  
10 filed nothing in opposition to the motions, nor has he requested additional time to respond. Plaintiff has  
11 previously demonstrated his ample ability to litigate this matter, and has in the time for responding to  
12 the summary judgment motions filed other motions of his own, including a motion to recuse and a  
13 motion to enforce an alleged settlement agreement. Dkt. ## 126, 132. He also timely filed his  
14 opposition to a motion for sanctions filed by defendants. Dkt. # 144. These filings demonstrate that he  
15 is not in any way impaired in his ability to litigate this matter. Therefore, pursuant to Local Rule CR  
16 7(b)(2), plaintiff's failure to respond to the motions for summary judgment shall be deemed an  
17 admission that each motion has merit.

18 Accordingly, it is hereby ORDERED:

19 (1) Boeing's Motion for Summary Judgment on the WLAD Claims (Dkt. # 122)

20 Boeing moves for summary judgment on plaintiff's claims under the WLAD, asserting that the  
21 Court has already determined that there is no evidence in the record that plaintiff suffered from a  
22 disability. Plaintiff has not come forward with either argument or evidence to refute this assertion.  
23 Accordingly, Boeing's motion for summary judgment on plaintiff's claims under the WLAD (Dkt. #  
24 122) is GRANTED and plaintiff's WLAD claims are DISMISSED.

25 (2) The Union's Motion for Summary Judgment on Purported State Law Claims (Dkt. # 118)

26 The Union has moved for summary judgment on plaintiff's state law claims of infliction of  
27 emotional distress, collusion between Boeing and the Union, retaliation, disparate treatment, and breach  
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1 of the implied covenant of good faith and fair dealing. The Union contends that these claims are all  
2 preempted by federal law, specifically Section 301 of the Labor Management Relations Act, 29 U.S.C. §  
3 185 (“LMRA”), and Section 9(a) of the National Labor Relations Act, 29 U.S.C. § 159 (“NLRA”).

4 Section 301 establishes federal jurisdiction over suits for violation of labor contracts. It  
5 completely preempts state law claims that are “substantially dependent upon analysis of the terms of an  
6 agreement made between the parties to a labor contract.” *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202,  
7 220 (1985). Section 9(a), which establishes the duty of fair representation, has similar preemptive  
8 effect over emotional distress claims. *Adkins v. Mireles*, 526 F. 3d 531, 541-52 (9th Cir. 2008).

9 Plaintiff has nowhere shown how his state law claims escape this preemption. Accordingly, the  
10 Union’s motion for summary judgment (Dkt. # 118) is GRANTED and plaintiff’s state law claims  
11 against the Union are DISMISSED.

12 (3) Boeing’s Motion for Summary Judgment on State Law Claims (Dkt. # 119)

13 Boeing has similarly moved for dismissal of plaintiff’s claims of infliction of emotional distress,  
14 collusion, retaliation, disparate treatment, and breach of the implied covenant of good faith and fair  
15 dealing. As shown above, plaintiff has nowhere argued or shown that these state law claims are not  
16 completely preempted by federal law. Accordingly, Boeing’s motion for summary judgment is  
17 GRANTED and these claims are DISMISSED.

18 The Clerk shall enter judgment in favor of defendants on plaintiff’s state law claims.

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20 DATED May , 2012.

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23 RICARDO S. MARTINEZ  
24 UNITED STATES DISTRICT JUDGE  
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